

THE UNITED STATES OF AMERICA and
THE STATE OF IOWA,

Plaintiffs,

V.

THE CITY OF POSTVILLE, IOWA,

Defendant.

CIVIL ACTION NO. C04-1040-LRR

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and through undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA") and the U.S. Department of Interior (U.S. Fish and Wildlife Service and National Park Service), and the State of Iowa ("State"), by authority of the Attorney General of the State of Iowa and through undersigned counsel, files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Postville, Iowa ("Postville," "City" or "Defendant") for numerous violations of federal and state environmental laws at its industrial Publicly Owned Treatment Works ("POTW") in Postville, Iowa, and for damages for injury to, destruction of, and/or loss of natural resources resulting from the release of hazardous substances from the City due

to a significant discharge in March 2000. ("March 2000 Discharge Event") that contributed to the killing of fish and other aquatic life in the Yellow River ("aquatic life kill"). Specifically, this action is brought by the United States pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("CWA"), 33 U.S.C. § 1319(b) and (d); Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); and the Park System Resource Protection Act (PSRPA), 16 U.S.C. § 19jj.

2. The State also institutes this action pursuant to Sections 455B.112 and 455B.191 of the Iowa Code Annotated ("I.C.A."), as amended.

3. The United States and the State seek injunctive relief and the assessment of civil penalties against Defendant for violations of the CWA, and regulations promulgated thereunder, and for violations of Section 455B.186(1) of the I.C.A., and 567 Iowa Administrative Code ("IAC") 62.1(1) and 64.3(1), for unlawful discharges of wastewater into navigable waters of the United States and into the waters of the State in violation of the terms of the National Pollutant Discharge Elimination System permit ("NPDES Permit" or "Permit") issued to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 455B.174(4)(a) of the I.C.A., and for failure to enforce Pretreatment Standards for Industrial Users discharging into the POTW, as required by its Permit, the CWA and the I.C.A.

4. The United States and the State seek monetary relief for natural resource damages, including compensatory restoration and/or past assessment costs, against Defendant as a consequence of injuries to, destruction of, and/or loss of natural resources and the services they provide, as a result of the release of hazardous substances from the March 2000 Discharge Event that contributed to the aquatic life kill in the Yellow River.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505(a) of the CWA, 33 U.S.C. §§ 1319(b) and 1365(a).

6. Authority to bring this action on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516, 519, and by Section 506 of the CWA, 33 U.S.C. § 1366.

7. Authority to bring this action on behalf of the State of Iowa is vested in the Attorney General for the State of Iowa by Section 455B.112 of the I.C.A.

8. Notice of the commencement of this action has been given to the State pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

9. Section 309(e) of the CWA, 33 U.S.C. §1319(e), requires that the State join as a party to this action.

10. Venue lies in the Northern District of Iowa pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because

Defendant resides and is located in this judicial district and the violations alleged in this Complaint are alleged to have occurred in this judicial district.

DEFENDANT

11. Defendant Postville is a political subdivision of the State, and a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

12. Postville is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section 455B.171(16) of the I.C.A.

13. Postville owns and operates an industrial wastewater treatment plant, which is a "POTW," as that term is defined at 40 C.F.R. §§ 122.2 and 403.3, and 567 IAC 60.2.

14. Postville's POTW is a wastewater "disposal system" as defined by Section 455B.171(5) of the I.C.A.

15. During all times relevant to this Complaint, non-domestic discharges of pollutants were introduced into the Postville POTW by one or both of the two "Industrial Users" ("IUs"), as that term is defined by Section 502(18) of the CWA, 33 U.S.C. § 1362(18). The IUs are also "major contributing industries," as that term is defined in 567 IAC 60.2.

STATUTORY BACKGROUND

16. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and implementing regulations, prohibit the discharge of pollutants into navigable waters of the United States by any person, except as in compliance with other sections of the CWA,

including Sections 307 and 402, 33 U.S.C. §§ 1317 and 1342, which govern activities subject to the CWA Pretreatment Program and the issuance of NPDES permits.

17. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA may issue NPDES permits that authorize the discharge of pollutants into navigable waters of the United States, subject to the conditions and limitations set forth in such permits.

18. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a state may establish its own NPDES permit program and, after receiving approval of its program by the EPA Administrator, may issue permits.

19. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges into navigable waters of the United States.

20. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), and the states' NPDES programs.

21. Section 307 of the CWA, 33 U.S.C. § 1317, authorizes the adoption of regulations establishing Pretreatment Standards for the introduction of pollutants into POTWs which are not susceptible to treatment at the POTW or which would interfere with the operation of the POTW.

22. As required by Section 307 of the CWA, 33 U.S.C. § 1317, EPA

promulgated the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 C.F.R. Part 403, which establish the "responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in [POTWs]. . . ." 40 C.F.R. § 403.1(a).

23. Pretreatment Standards established at 40 C.F.R. Part 403 contain a general prohibition at 40 C.F.R. § 403.5(a) against the introduction into a POTW of any pollutant or pollutants that cause interference or pass through, as those terms are defined at 40 C.F.R. § 403.3(i) and (n), respectively, and specific prohibitions as described in 40 C.F.R. § 403.5(b), against the introduction of certain pollutants into a POTW.

24. Pretreatment Standards established at 40 C.F.R. § 403.5(c)(2) require POTWs to develop and enforce specific effluent limits for IUs, where pollutants contributed by IUs have resulted in interference or pass through and such violations are likely to recur.

25. Pretreatment limits developed to protect a POTW from the introduction of pollutants into the POTW that would cause interference or pass through, or would violate one of the specific Pretreatment prohibitions are "local limits" as defined by 40 C.F.R. § 403.5(d) and "Pretreatment Standards" for purposes of Section 307(c) of the CWA, 33 U.S.C. § 1317(c).

26. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the

Administrator of EPA to commence a civil action for appropriate relief when any person violates, *inter alia*, Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317, or a condition or limitation contained in an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

27. EPA retains concurrent enforcement authority with authorized state NPDES programs under Sections 309 and 402(i) of the CWA, 33 U.S.C. §§ 1319 and 1342(i).

28. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, *inter alia*, Sections 301 or 307 of the CWA, 33 U.S.C. §§ 1311 or 1317, or who violates any condition or limitation in an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a maximum civil penalty of \$25,000 per day per violation. Under 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, as amended, and pursuant to 28 U.S.C. § 2461, the civil penalty amount has been raised to \$27,500 a day for each violation occurring after January 20, 1997, and to \$32,500 a day for each violation occurring after March 15, 2004 (See 69 Fed. Reg. 7121, February 13, 2004).

29. Section 455B.186(1) of the I.C.A. prohibits the discharge of a pollutant into any waters of the State, except pursuant to a permit issued by the director of the Iowa Department of Natural Resources ("IDNR").

30. 567 IAC 62.1(1) prohibits the discharge of any pollutant from a point source into navigable waters unless authorized by an NPDES permit issued by the

director of IDNR.

31. 567 IAC 64.3(1) prohibits the operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director of IDNR.

32. 567 IAC 62.1(6) prohibits, in pertinent part, the discharge of wastewater into a POTW in volumes or quantities in excess of those to which a major contributing industry is committed in a treatment agreement described in 567 ICA 64.3(5).

33. 567 IAC 62.1(7) states, in pertinent part, that wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered wastes that interfere with the operation or performance of a POTW, and are prohibited.

34. Section 455B.191(1) of the I.C.A. provides that any person who violates any provision of Iowa Code Chapter 455B, division III, part 1, or any permit, rule, standard or order issued thereunder, shall be subject to a civil penalty not to exceed five thousand dollars for each day of violation.

35. Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); and PSRPA, 16 U.S.C. § 19jj, authorize the recovery of monies for damages for injury to, destruction of, and/or loss of natural resources belonging to, managed by, held in trust by, controlled by or appertaining to the United States as trustee for those resources, for use to restore, replace or acquire the equivalent of such

natural resources, and to recover the costs of assessing such damages.

36. Pursuant to Executive Order 12580, and the National Contingency Plan, 40 C.F.R. Part 300, the President of the United States has delegated to the Department of the Interior, on behalf of the United States Fish and Wildlife Service and National Park Service, authority to act as trustee for natural resources that may have been, or in the future may be, injured by the release of hazardous substances at a facility.

37. Section 481A.151(1) of the I.C.A. provides that a person who pollutes a water of the State of Iowa in violation of State law is liable to pay restitution for injury caused to a wild animal by the pollution. The amount of the restitution shall also include the IDNR's administrative costs for investigating the injury.

GENERAL ALLEGATIONS

38. EPA approved the State's NPDES permit program under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), on August 10, 1978.

39. EPA approved the State's Pretreatment program under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), on June 3, 1981, as an addition to the State's approved NPDES program.

40. The City owns and operates a POTW, which is a controlled release lagoon system located within Section 33, Township 96N, Range 6W, Allamakee County, Postville, Iowa.

41. The City POTW is exclusively dedicated to receiving and treating wastewater from two IUs, AgriProcessors, Inc., and Iowa Turkey Products, Inc., through

sewer lines that run to the City POTW. .

42. The POTW was constructed in 1967 and has been modified and expanded several times since that date.

43. The POTW is a four-cell lagoon system and has no mechanical treatment, but rather relies on time-in-retention for biological processes to reduce the level of pollutants in the water prior to its release into the receiving stream. Some aeration equipment has been added to the POTW to increase the pollution reduction efficiency of the treatment process.

44. The POTW discharges to an unnamed stream, sometimes referred to as Hecker Creek, and then to the Yellow River.

45. The unnamed creek and the Yellow River are each a "navigable water" and a "water of the United States" under Section 502 of the CWA, 33 U.S.C. § 1362 (7), and "waters of the State" within the meaning of Section 455B.171(36) of the I.C.A.

46. The State issued NPDES Permit number IA 0375002 to the City, which contains both final effluent limitations for the City and Pretreatment limits for the IUs, and was most recently reissued on November 27, 1995, and expired on November 26, 2000.

47. The Pretreatment limits for each IU were negotiated between the City and the IUs in a document identified as a "Treatment Agreement," which was reviewed and approved by the State and incorporated into the City's NPDES Permit.

48. The Permit has been amended several times during its five-year permit

cycle.

49. The City filed a timely permit application before the permit expired and, under State law, the Permit was administratively extended.

50. The discharge point for the Postville POTW, identified as "Outfall No. 001," is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and Section 445B.171(17) of the I.C.A.

51. Wastewaters discharged from the Postville POTW are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and Section 455B.171(18) of the I.C.A.

52. Discharges from Postville's POTW constitute "discharges of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

53. The March 2000 Discharge Event was a discharge of pollutants from the City's POTW, in violation of the City's NPDES Permit, the CWA, Section 455B.186(1) of the ICA and 567 IAC 62.1(1), which resulted in the release of hazardous substances, including ammonia, that contributed to the aquatic life kill in the Yellow River. Section 311(b)(2) of the CWA, 33 U.S.C. § 1321(b)(2); Section 102 of CERCLA, 42 U.S.C. § 9602; 40 C.F.R. § 117.3; and 40 C.F.R. § 302.4. As a result, the United States and the State are authorized, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); PSRPA, 16 U.S.C. § 1911j; and/or Section 481A.151(1) of the I.C.A., to seek recovery for damages for injuries to, destruction of, and/or loss of natural resources and the services they provide, including

the costs of assessing such damages, resulting from the March 2000 Discharge Event that contributed to the aquatic life kill.

FIRST CLAIM OF RELIEF

(Violation of NPDES Permit Limitations)

54. The allegations of the foregoing Paragraphs are incorporated herein by reference.

55. During all times relevant here, Postville's NPDES Permit has required compliance with effluent limitations for flow, five-day carbonaceous biochemical oxygen demand ("CBOD₅"), total suspended solids ("TSS"), and pH.

56. Over the past five years and before, Postville has discharged pollutants from its POTW in violation of the effluent limits set forth in its NPDES Permit for flow, CBOD₅, TSS and pH.

57. Postville is therefore in violation of its NPDES permit, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, Section 455B.186(1) of the I.C.A. and 567 IAC 62.1(1) and 64.3(1).

SECOND CLAIM OF RELIEF

(Violation of NPDES Permit Conditions)

58. The allegations of the foregoing Paragraphs are incorporated herein by reference.

59. During all times relevant here, Postville's NPDES Permit has required compliance with Standard Conditions requiring, among other things, the duty to mitigate

and the duty of proper operation and maintenance.

60. Over the past five years and before, Postville has periodically failed to comply with the "duty to mitigate" requirement of its NPDES Permit by failing to take all reasonable steps to minimize or prevent any discharge in violation of its NPDES Permit that had a reasonable likelihood of adversely affecting human health or the environment. Specifically, discharges, including but not limited to the March 2000 Discharge Event, contributed to a significant aquatic life kill in the Yellow River.

61. Over the past five years and before, Postville has periodically failed to comply with the "proper operation and maintenance" requirement of its NPDES Permit by, among other things, failing to maintain an adequate and safe level of freeboard in the POTW lagoons.

62. Postville is therefore in violation of its NPDES permit, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and 567 IAC 64.3(1).

THIRD CLAIM FOR RELIEF

(Failure To Enforce Pretreatment Standards)

63. The allegations of the foregoing Paragraphs are incorporated herein by reference.

64. During all times relevant here, Postville's NPDES Permit has incorporated and required compliance with a "Major Contributing Industries Limitations, Monitoring and Reporting Requirements" provision, which requires Postville to 1) require all users of the POTW to comply with provisions of the CWA, including Section 307, 33 U.S.C.

§ 1317, and 2) limit and monitor pollutants from major contributing industries as required by the Permit, and to submit sample results to the State.

65. Postville's NPDES Permit, as amended, contains Pretreatment limitations for IU AgriProcessors, Inc. for flow, five-day biochemical oxygen demand ("BOD₅"), TSS, oil and grease, chloride and pH.

66. Postville's NPDES Permit, as amended, contains Pretreatment limitations for IU Iowa Turkey Products, Inc. for flow, BOD₅, TSS, oil and grease, and pH.

67. Pretreatment limitations for IUs AgriProcessors, Inc. and Iowa Turkey Products, Inc. are Pretreatment Standards pursuant to Section 309 of the CWA, 33 U.S.C. § 1317.

68. Over the past five years and before, IU AgriProcessors, Inc. has discharged pollutants from its IU to the POTW in violation of the Pretreatment effluent limits set forth in the NPDES Permit for flow, BOD₅, TSS and chloride.

69. Over the past five years and before, IU Iowa Turkey Products, Inc. has discharged pollutants from its IU to the POTW in violation of the Pretreatment effluent limits set forth in the NPDES Permit for BOD₅ and TSS.

70. Over the past five years and before, Postville has not consistently limited the IUs' discharges to the POTW or required the IUs to comply with Pretreatment effluent limitations and conditions of the Permit.

71. Failure by Postville to limit the IUs' discharges to the POTW or require the IUs to comply with the Pretreatment effluent limitations and conditions of the Permit has

resulted in violations of the Postville NPDES permit limitations, including but not limited to the March 2000 Discharge Event that contributed to an aquatic life kill in the Yellow River.

72. Postville is therefore in violation of its NPDES permit, Sections 301, 307 and 402 of the CWA, 33 U.S.C. §§ 1311, 1317 and 1342; 40 C.F.R. § 403.5(c)(2); and 567 IAC 64.3(1).

FOURTH CLAIM FOR RELIEF

(Natural Resource Damages)

73. The allegations of the foregoing Paragraphs are incorporated herein by reference.

74. In March of 2000, Postville caused a significant discharge of pollutants in violation of the CWA and Postville's NPDES Permit, that resulted in the release of hazardous substances, including ammonia. The release of hazardous substances from this March 2000 Discharge Event contributed to an aquatic life kill in the Yellow River.

75. The aquatic life kill in the Yellow River was an injury to, destruction of, and/or loss of natural resources and the services they provide.

76. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); PSRPA, 16 U.S.C. § 19jj; and/or Section 481A.151(1) of the I.C.A., Postville is liable for the recovery of damages for injuries to, destruction of, and/or loss of natural resources and the services they provide, including compensatory restoration costs and the administrative costs of assessing such damages, as a result

of the release of hazardous substances from the March 2000 Discharge Event that contributed to the aquatic life kill in the Yellow River.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Section 455B.112 of the I.C.A., enjoin Postville from any and all ongoing and future violations of the CWA and the I.C.A., by ordering compliance with the CWA, the I.C.A., the NPDES Permit, the Pretreatment Regulations, and Pretreatment Standards.
2. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and Section 455B.191(1) of the I.C.A., assess civil penalties against Postville, as permitted by law, up to the date of judgment herein.
3. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); PSRPA, 16 U.S.C. § 19jj, and Section 481A.151(1) of the I.C.A., award monetary relief from Postville for natural resource damages, including compensatory restoration and past assessment costs.
4. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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